

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

FRATERNAL ORDER OF POLICE,
LODGE 62,

Respondent,

-and-

DOCKET NO. CI-79-14

LEOPOLD BURGER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by an individual which claims that the majority representative's failure to submit a grievance to the terminal step of the contractual grievance procedure violated rights guaranteed by the Act. The Director observes that there is no statutory obligation on the part of a majority representative to process a grievance beyond the initial presentation level of the grievance procedure. The Director further observes that the majority representative's conduct in grievance processing is governed by the standards of fair representation, i.e., that the majority representative's conduct in representing the interests of unit members must not be arbitrary, discriminatory or in bad faith. The Charging Party did not allege that the majority representative acted in an arbitrary, discriminatory or bad faith manner nor do the facts alleged by the Charging Party support a claim that the majority representative has violated the duty of fair representation.

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Appearances:

For the Respondent
John Schenck, Vice President

For the Charging Party
Pompliano & Ryglicki
(Robert J. Pampliano, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 29, 1978 by Leopold Burger (the "Charging Party") against the Fraternal Order of Police, Lodge 62 ("FOP") alleging that the FOP has engaged in unfair practices under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically, N.J.S.A. 34:13A-5.4(b)(1) and (5). ^{1/}

^{1/} These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (5) Violating any of the rules and regulations established by the Commission."

The Charging Party alleges that "The Charging Party filed a Grievance, which the bargaining unit refuses to process to finality." More specifically, the Charging Party states that he was advised that the FOP "would not process his grievance to the terminal stage" of the grievance procedure contained in the collective negotiations agreement between the FOP and the Public Employer. The Charging Party is a member of a collective negotiations unit represented by the FOP.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof ... "

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

Initially, the undersigned observes that although a majority representative has a statutory obligation to present a grievance to the public employer on behalf of a unit member, Red Bank Regional Education Association v. Red Bank Regional High School Board of Education, 78 N.J. 122 (1978); West Windsor Township v. PERC, 78 N.J. 98 (1978), there is no statutory obligation requiring the majority representative to process grievances through the various levels of the grievance procedure beyond the presentation level. ^{5/} However, the undersigned has noted that a majority representative, pursuant to the Act, is under a statutory obligation to fairly represent the interests of all employees within its negotiations unit and that a violation of such duty is cognizable under § 5.4(b)(1). See, In re Red Bank Board of Education, D.U.P. No. 79-17, 5 NJPER 56 (¶ 10037 1979); In re Township of Springfield, D.U.P. No. 79-13, 5 NJPER 15 (¶ 10008 1978). In both Red Bank and Springfield the undersigned analyzed the duty of fair representation in the context of collective negotiations conduct. However, the principles set forth therein, that fair representation requires the absence of arbitrary, discriminatory or bad faith conduct, are equally applicable in the context of the majority representative's conduct in carrying out its duties with respect to grievance

^{5/} The Charging Party does not allege that the FOP is under a contractual obligation to process the grievances of all unit members to the terminal step.

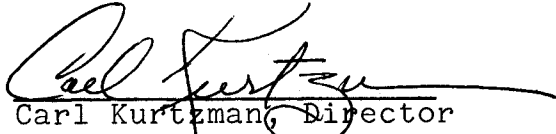
processing on behalf of unit members. See In re Council #1, AFSCME, AFL-CIO, P.E.R.C. No. 78-28, 5 NJPER 21 (¶ 10013 1978). ^{6/}

The Charging Party does not allege arbitrary, discriminatory, or bad faith conduct on the part of the FOP, nor does the Charge allege facts which, if true, would establish that the FOP's conduct has been arbitrary, discriminatory, or in bad faith, and consequently a violation of the Act.

Additionally, the Charging Party alleges a violation of § 5.4(b)(5), but has not identified the Commission rule upon which reliance is placed. A complaint based upon a § (b)(5) allegation may not be issued inasmuch as the Charging Party has not alleged the specific rule of the Commission claimed to be violated. ^{7/}

Accordingly, for the above reasons, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: April 26, 1979
Trenton, New Jersey

^{6/} Both the Red Bank and Springfield decisions rely upon the concept of fair representation established in the private labor relations sector and cite Vaca v. Sipes, 386 U.S. 171 (1967). In Vaca, the U. S. Supreme Court held that "A breach of the statutory duty of fair representation occurs when a union's conduct toward a member of the unit is arbitrary, discriminatory, or in bad faith." [at 190]. The Court's decision in Vaca was made in the context of the exclusive representative's obligation to process grievances.

^{7/} See In re Madison Township Board of Education, E.D. No. 76-8 (1975). Moreover, the undersigned cannot discern a Commission rule which is related to the subject matter at issue.